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4 IN THE CIRCUIT COURT OF THE STATE OREGON
5 FOR THE COUNTY OF MULTNOMAH
6

7 MICHELLE FAWCETT, an individual,) Case No.
8 Plaintiff,) **COMPLAINT**
9 v.) CLAIM NOT SUBJECT TO
10 CITY OF PORTLAND, a municipal) MANDATORY ARBITRATION
11 corporation,) PRAYER AMOUNT: \$250,000
12 Defendant.) FEE AUTHORITY: ORS 21.160(1)(c)

13 For her Complaint against Defendant City of Portland (the “City”),
14 Plaintiff Michelle Fawcett (“Fawcett”) alleges as follows:

15 **INTRODUCTION**

16 1.

17 Michelle Fawcett is now permanently disfigured because on August
18 4, 2018, Portland Police Bureau Officers (“PPB Officers”) shot flashbang
19 munitions directly into a group of Portland citizens peacefully demonstrating
20 against white supremacists. Fawcett, a 53 year-old woman and Portland
21 resident, neither engaged with PPB Officers nor provoked this attack. Rather,
22 she was exercising her right, protected under the United States and Oregon
23 Constitutions, to stand against bigotry and intolerance. Unfortunately, the
24 peaceable assembly that Fawcett participated in was met with excessive force,
25 as PPB Officers in riot gear used military-grade munitions—meant to be shot
26 overhead, into the air—that PPB Officers instead shot directly into groups of

1 innocent people. Under the Oregon Tort Claims Act, the City is liable for the
2 PPB Officers' tortious battery.

3 **THE PARTIES**

4 2.

5 Fawcett is a citizen and resident of Portland, Oregon.

6 3.

7 The City is a municipal corporation and public body within the
8 State of Oregon located in Multnomah County.

9 4.

10 The Portland Police Bureau ("PPB") is an agency of the City. The
11 acts that give rise to Fawcett's claims were committed by PPB Officers in the
12 course and scope of their duties on the public body's behalf. Under ORS
13 30.285(1), the City must indemnify its officers and is therefore liable for the PPB
14 Officers' torts against Fawcett.

15 5.

16 Notice of this claim was properly given to the City within 180 days
17 of the incident.

18 **FACTUAL BACKGROUND**

19 **Portland, Oregon: home to violent clashes with law enforcement**

20 6.

21 The City of Portland, Oregon, has a long history of an engaged
22 citizenry and is a hub for First Amendment activity, with numerous public
23 marches and large public gatherings each year. Public assemblies enrich the
24 fabric of Portland by providing a means of expression when people feel unheard
25 through other methods, a beacon of solidarity and connection for people
26 impacted by the issues subject to protest, a vehicle to spark conversations and

1 debate about important issues, and an opportunity to form community and
2 connections, leading to constructive engagement, organizing, and action.

3 7.

4 Portland also has a history of its law enforcement agency—the
5 PPB—clashing, often violently, with protesters. The PPB has become
6 increasingly militarized in its tactics, deploying droves of officers wearing body
7 armor, including helmets, carrying batons, and full-body riot shields (“riot
8 gear”), and using chemical agents as crowd-control weapons. These crowd-
9 control weapons include tear gas, pepper-spray bullets, and warning/signaling
10 munitions commonly referred to as “flashbangs.” When used as intended,
11 flashbang rounds are meant to be shot into the air and emit a bright flash of
12 light and a powerful sound. The expectation is that the flashbang will deter or
13 direct the movement of crowds or vehicles. Flashbang rounds are not intended
14 to be launched directly at individuals or crowds of people. Flashbang rounds
15 contain dangerous chemical agents that can cause severe burns on contact.
16 Some manufacturers of these rounds include warnings that serious injury or
17 death may result in firing flashbangs directly at people.

18 8.

19 On multiple occasions, PPB Officers have deployed chemical agents
20 and crowd-control weapons against protesters, as well as non-protesting
21 bystanders, members of the press, and patrons of nearby businesses.

22 **Portland citizens stand against bigotry and extremism**

23 9.

24 On August 4, 2018, the City permitted a rally for the Patriot Prayer
25 and Proud Boys organizations. Some members of those groups support white
26 supremacist views and other extreme ideologies and are known to provoke

1 violent conflicts. Specifically, the August 4th event was publicized as a “Gibson
2 for Senate Freedom March” and was sponsored by leader Joey Gibson’s
3 campaign for the U.S. Senate in Washington. Patriot Prayer advertised that
4 armed guards would escort buses carrying Patriot Prayer members from
5 Vancouver, Washington, to the rally location at Tom McCall Waterfront Park in
6 downtown Portland. On information and belief, PPB Officers were in regular
7 contact, via email or text message, with Patriot Prayer members both prior to
8 and during the event. A little more than a month before on June 30, 2019, PPB
9 Officers used flashbangs and rubber bullets to disperse a protest of another Joey
10 Gibson event.

11 10.

12 In response to the August 4th event, many Portlanders gathered to
13 peacefully protest against the hateful rhetoric and ideas shared by members of
14 Patriot Prayer and the Proud Boys. The protesters first assembled at Portland
15 City Hall, then marched down to SW Salmon to SW Naito Parkway to gather
16 across the street from the rally. Eventually, both the rally and the protesters
17 moved down their respective sides of the street to SW Columbia.

18 **PPB Officers protect Patriot Prayer, open fire on peaceful protestors**

19 11.

20 At approximately 1:45 p.m. that day, Fawcett was standing among
21 other protestors on SW Columbia in between SW Natio Parkway and SW 1st
22 Avenue. The atmosphere was calm. Fawcett was standing far enough away
23 from the intersection, behind a large crowd, that she could not see the
24 intersection, any police, or anything that may have been happening near the
25 intersection.

26 ///

12.

Then suddenly there was a deafening explosion. PPB Officers started shooting flashbangs directly into the crowd of protestors. Multiple explosions followed, sending people running panicked. The resulting scene was chaotic and described by some as feeling like “a war zone.” Notably, these shots were all directed at the protestors, not at the Patriot Prayer or Proud Boys’ members, many of whom were openly carrying weapons.

13.

By firing flashbangs directly at the crowd of protestors, rather than overhead as intended, PPB Officers demonstrated an alarming lack of concern for the safety of Portland citizens. PPB Officers’ conduct also revealed either a lack of effective training in the use of these munitions or reckless dismissal of that training.

**Fawcett is permanently scarred and emotionally traumatized by
PPB Officers’ attack**

14.

Fawcett was struck by a flashbang round. The round hit Fawcett in the chest and left arm. Fawcett felt immediate, searing pain in both her chest and arm. Fawcett did not know what was happening and thought she may die. But as PPB Officers continued to fire at protestors, volunteer street medics in attendance were not able to assist her and had to run along with the crowd to safety.

15.

Eventually, Fawcett received medical attention. She suffered third-degree chemical burns, major impact wounds, and major soft-tissue damage, as well as mental and emotional distress as a result of the incident.

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16.

Fawcett was neither arrested nor cited for her participation in the peaceful protest. She did not resist any direction from a PPB officer or act in any way that could be construed as provoking any PPB officer. In fact, Fawcett had no contact with any PPB officer on the day of the protest prior to being hit by the flashbang round. At the time she was shot, she was far enough away from PPB Officers that such contact would have been impossible. PPB Officers never instructed Fawcett to move or warned her that PPB Officers were deploying flashbangs or any other crowd-control weapons.

CLAIM FOR RELIEF
(Battery)

17.

Fawcett incorporates by reference the allegations above.

18.

The PPB Officers intentionally deployed the flashbang round that struck Fawcett and intentionally directed the flashbang round into crowd. Thus, they intentionally used excessive force. As such, the City is liable for battery. Because the PPB Officers' force was excessive, their actions were not privileged under ORS 161.235.

19.

As a direct result of the PPB Officers' use of excessive force, Fawcett was permanently injured. She sought and continues to seek medical treatment, missed work for a time, has experienced pain and suffering, and has been both depressed and afraid to leave her home because of the trauma she experienced. She no longer feels safe to exercise her rights of peaceful assembly and free speech. Fawcett has suffered damages in an amount to be determined

1 by a jury, not to exceed \$250,000.

2 WHEREFORE, Plaintiff Fawcett prays for judgment from this
3 Court on her claim as follows:

- 4 1. For a damages award against the City in a sum not more
5 than \$250,000;
6 2. For Plaintiff's costs and disbursements; and
7 3. For such other and further relief as the Court deems just and
8 equitable.

9 DATED: August 5, 2019.

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